IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15828 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAGANBHAI KHODABHAI PATEL - Petitioner(s)
Versus
RUPAVATI SEVA SAHKARI MANDALI LTD - Respondent(s)

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Appearance :
MR NEERAJ J VASU for Petitioner(s) : 1,
MS SANDHYA D NATANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/09/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged an order dated 12-6-2006 passed by the Board of Nominees as upheld by the

Cooperative Tribunal by an order dated 14-9-2004.

2. Against the petitioner and two other individuals, respondent no.1-Society had filed a Lavad Suit No. 602/1997 for recovering a sum of Rs. 5,15,711/-. It was the case of respondent no.1-Society that petitioner had committed misappropriation of the society's funds. It appears that initially the petitioner had engaged an advocate before the Board of Nominees. Learned advocate however, at some stage is recorded to have passed pursis of no instructions. Eventually, the Board of Nominees proceeded further with Lavad Suit in absence of the petitioner. It is recorded that petitioner took no steps to file written statement or to cross examine the witness of the society. Ultimately, the Board of Nominees passed decree in favour of respondent no.1 by an order dated 12-6-2006. The petitioner is directed to pay a sum of Rs. 5,15,711/- with interest. The petitioner unsuccessfully challenged the said

order of Board of Nominees before the Cooperative Tribunal. Tribunal rejected the appeal of the petitioner on 14-9-2004. The petitioner has therefore, preferred this petition.

3. On 22-3-2006, learned Single Judge of this Court took note of the statement made on behalf of the petitioner that the petitioner is ready to deposit 30% of the amount as also a reasonable cost of Rs. 5,000/- for seeking remand of the proceedings before the Board of Nominees. It was however, conveyed that in the Provident Fund Account of the petitioner there is sufficient fund which the respondent-society can directly access.

4. Learned advocate Shri Vasu for the petitioner reiterated the stand of the petitioner at the time of final hearing of this petition. He submitted that the petitioner was never informed either by the Board of Nominees or by his own advocate that advocate is no longer defending

the petitioner. The entire proceedings therefore, were decided ex-parte. He requested that petitioner be given an opportunity to defend himself.

5. Considering the submissions made, I find that the petitioner should be given an opportunity to defend himself. For the said purpose, impugned orders passed by the Board of Nominees and the Cooperative Tribunal are quashed. This however, cannot be done unconditional. This order is conditional upon fulfillment of following conditions :

1. The petitioner shall deposit with respondent no.1-society 30% of the suit amount of Rs. 5,15,711/-.

a. For the above purpose, respondent no.1-society is permitted to appropriate from the Provident Fund Account of the petitioner, sum to the aforesaid extent.

b. For this purpose if the society requires any writing or discharge from the

petitioner, same shall be granted.

c. If the Provident Fund Account of the petitioner does not carry sufficient fund to cover the entire amount required to be deposited by the petitioner, he shall deposit with respondent no.1-society the shortfall within a period of two months from today.

d. The respondent no.1-society shall within a period of two weeks from today indicate to the petitioner the total sum accumulated in Provident Fund Account of the petitioner and will call upon the petitioner to make good the shortfall, if so necessary.

2. The petitioner shall pay a cost of Rs.5,000/-(Rupees five thousand only) of this litigation to respondent no.1-society.

3. The petitioner shall file an undertaking before this Court to abide by the above conditions. This shall be done within a period of one week from today.

4. The amount that may be deposited with respondent no.1-society as provided here-in-

above will be subject to final outcome of the proceedings.

6. With these directions the petition is disposed of. The Board of Nominees may take up hearing of the remand proceedings only after ensuring that conditions are satisfied. In case the petitioner fails to fulfill any of these conditions, this order shall automatically stand discharged and the orders passed by the Board of Nominees as well as the Cooperative Tribunal shall be revived.

(Akil Kureshi, J.)

(raghu)